

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

Arnoud EKKER, et al.

Serial No. 09/353,625

Group Art Unit: 2183

Confirmation No.

Filed: July 15, 1999

Examiner: E. Coleman

For: A REAL-TIME CHARGE CALCULATION SYSTEM

RESPONSE

RECEIVED

Assistant Commissioner for Patents
Washington, D.C. 20231

JAN 03 2003

Technology Center 2100

Sir:

This is in response to the Office Action mailed October 4, 2002, and having a period for response set to expire on January 4, 2002.

The following remarks are respectfully submitted. Reconsideration of the claims is respectfully requested.

In the Office Action mailed October 4, 2002, the Examiner noted that claims 1-28 were pending and rejected all claims. No claims have been amended and, thus, in view of the forgoing claims 1-28 remain pending for reconsideration which is requested. No new matter has been added. The Examiner's rejections are traversed below.

On page 2 of the Office Action the Examiner rejected claims 1-8, 10, 19-22, 25 and 28 under 35 U.S.C. § 102 as anticipated by Loeb '641.

The present invention is directed to "pricing" (see independent claims 1, 11 and 25-28) events which is in stark contrast to Loeb '641 which is directed to billing activities, such as calculating how much is due. "Pricing" an event is an activity in which a price for something is set as noted in the dictionary definition below.

Main Entry: ²price
Function: transitive verb

Inflected Form(s): priced; pricing

Date: 15th century

1 : to set a price on

2 : to find out the price of

3 : to drive by raising prices excessively <priced themselves out of the market>

- pricer noun

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The activity of pricing requires information about the services provided (recurring, one-time, and/or usage) and the customer agreement as well as any applicable discounts or alternative usage/pricing models -- all of that data is input into an algorithm and the system arrives at a price for a event initiated by or agreed to by a customer. For example, when an individual makes a long distance telephone call, the price of the call typically depends on the length of the call, the time of day, special arrangements with the carrier, such as free calling on weekends, etc. Billing, in contrast, simply compiles one or more price calculations (or prices) and transmits that information to the customer or other party. Loeb does not mention price calculation or pricing at all, let alone suggest a way to optimize the time at which a price is calculated relative to a billing period.

Loeb '641 is specifically directed at a system for providing open-ended subscriptions for commodities that are normally only available on a term basis (col. 1, lines 10-13, col. 3, lines 63-66). The present invention describes and claims a system and method for calculating a price (or "pricing") in real time for events related to a subscriber's service and/or usage. There is no commodity provided, and the service is customarily provided under an open-ended subscription -- is no term basis for the service agreement and therefore no need for a system or method to convert from a term basis.

While Loeb '641 does include a step for billing a subscriber, that is merely a step in a process that is directed to avoiding the need to annually renew the subscription for a magazine or other commodity. Loeb '641 does not teach a novel pricing method. Loeb '641 bills at agreed-upon intervals -- the consumer agreed to a payment frequency when subscribing (col. 7 line 65, col. 8, lines 13-15 which describe the payment frequency as either predetermined or constant). The billing at intervals involves determining how much has been paid on a bill and calculating a payment due (col. 9, lines 6-35). Loeb does not teach the calculation of a price, since the price (rate) is provided by the publisher and stored in the database and simply retrieved when it is time to bill the customer (col. 4, lines 19-25, col. 5, lines 57-59, col. 6, lines

46-47). Also, Loeb makes no attempt to optimize pricing in relation to a billing period. Loeb '641 simply searches for accounts with outstanding bill due dates - (col. 9, lines 7-10 which describe the system searching for payments due.) The AMS invention calculates charges for events in real-time such that pricing is performed at the earliest reasonable and practical time. This offers both the telecommunications company and its customers the most immediate and accurate access to unbilled charges possible, as well as improves the billing process by reducing the computational demands of the billing process (see specification page 2, lines 11-16)

Loeb '641 does discuss obtaining a cost but the cost is obtained by accessing a database (col. 5, lines 57-58). In any event, a cost is an amount to be paid and does not involve determining a price for (or pricing) something.

It is submitted that the present claimed invention of independent claims 1, 11 and 25-28 patentably distinguishes over Loeb '641 and withdrawal of the rejection is requested.

Page 3 of the Office Action rejects claims 9, 23 and 24 under 35 U.S.C. § 103 over Loeb '641 and Loeb '652. Page 4 of the Office Action rejects claims 11-18, 26 and 27 under 35 U.S.C. § 103 over Loeb '641 and Loeb '652.

Loeb '652 is directed at a system for providing free trade publications for completing a questionnaire. Loeb '652 adds nothing to Loeb '641 with respect to the pricing of events of the present invention. Withdrawal of the rejection on this basis is requested.

In addition Loeb '652 is not prior art to the present claimed invention. Loeb '652 was filed on July 27, 1999. The present application was filed on July 15, 1999 before the filing date of Loeb '652. Withdrawal of the rejection on this further basis is requested.

It is submitted that the invention of claims 9, 11-18, 23, 24, 26 and 27 distinguishes over the prior art and withdrawal of the rejection is requested.

The Examiner rejected claims 19-22 as anticipated pointing to alleged pricing activities of Loeb '641. Claim 19, and the claims which depend there from, are directed at determining whether a system event is to be created and creating that event. The Examiner has alleged nothing about Loeb '641 or any other art performing such actions. A prima facie case of anticipation under *In re Sun*, 31 USPQ 2d 1451, 1453 (Fed. Cir. 1993) (unpublished) "requires that the prior art reference disclose, either expressly or under the principles of inherency, every limitation of the claim. . . . But to be prior art under section 102(b), a reference must be enabling. . . . That is, it must put the claimed invention in the hand of one skilled in the art. . . . The examiner bears the burden of presenting at least a prima facie case of anticipation." The

Examiner has provided no rational and has pointed to no part of Loeb '641 that teaches or suggests the limitations of claim 19 or the claims that depend there from. The Examiner is requested to withdraw the rejection for lack of a proper foundation.

It is submitted that the invention of claims 19-24 distinguish over the prior art and withdrawal of the rejection is requested.

It is submitted that the claims are not taught, disclosed or suggested by the prior art. The claims are therefore in a condition suitable for allowance. An early Notice of Allowance is requested.

If any further fees, other than and except for the issue fee, are necessary with respect to this paper, the U.S.P.T.O. is requested to obtain the same from deposit account number 19-3935.

Respectfully submitted,

STAAS & HALSEY LLP

Date: _____

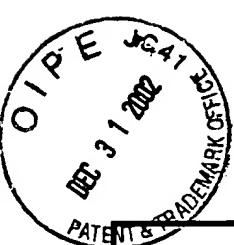
12/31/12

By: _____



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21831

S&H Form: (10/01)

REPLY/AMENDMENT FEE TRANSMITTAL	Attorney Docket No.	1330.1047	
	Application Number	09/353,625	
	Filing Date	July 15, 1999	
	First Named Inventor	Arnoud EKKER, et al.	
	Group Art Unit	2183	
AMOUNT ENCLOSED	0.00	Examiner Name	E. Coleman

FEE CALCULATION (fees effective 10/01/01)

CLAIMS AS AMENDED	Claims Remaining After Amendment	Highest Number Previously Paid For	Number Extra	Rate	Calculations
TOTAL CLAIMS	28	- 28 =	0	X \$ 18.00 =	\$ 0.00
INDEPENDENT CLAIMS	8	- 8 =	0	X \$ 84.00 =	0.00

Since an Official Action set an original due date of January 4, 2003, petition is hereby made for an extension to cover the date this reply is filed for which the requisite fee is enclosed (1 month (\$110); 2 months (\$400); 3 months (\$920); 4 months (\$1,440); 5 months (\$1,960)):

If Notice of Appeal is enclosed, add (\$320)

If Statutory Disclaimer under Rule 20(d) is enclosed, add fee (\$110)

Total of above Calculations =

Reduction by 50% for filing by small entity (37 CFR 1.9, 1.27 & 1.28)

TOTAL FEES DUE =

(1) If entry (1) is less than entry (2), entry (3) is "0".

(2) If entry (2) is less than 20, change entry (2) to "20".

(4) If entry (4) is less than entry (5), entry (6) is "0".

(5) If entry (5) is less than 3, change entry (5) to "3".

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METHOD OF PAYMENT

- ☒ Check enclosed as payment.
- ☐ Charge "TOTAL FEES DUE" to the Deposit Account No. below.
- ☐ No payment is enclosed and no charges to the Deposit Account are authorized at this time (unless specifically required to obtain a filing date).

GENERAL AUTHORIZATION

- ☒ If the above-noted "AMOUNT ENCLOSED" is not correct, the Commissioner is hereby authorized to credit any overpayment or charge any additional fees necessary to:

Deposit Account No. 19-3935

Deposit Account Name STAAS & HALSEY LLP

- ☒ The Commissioner is also authorized to credit any overpayments or charge any additional fees required under 37 CFR 1.16 (filing fees) or 37 CFR 1.17 (processing fees) during the prosecution of this application, including any related application(s) claiming benefit hereof pursuant to 35 USC § 120 (e.g., continuations/divisionals/CIPs under 37 CFR 1.53(b) and/or continuations/divisionals/CPAs under 37 CFR 1.53(d)) to maintain pendency hereof or of any such related application.

SUBMITTED BY: STAAS & HALSEY LLP

Typed Name	J. Randall Becker	Reg. No.	30,358
Signature		Date	12/31/02

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